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(03)

Single Bench

IN THE HON'BLE HIGH COURT OF CHHATTISGARH AT

BILASPUR (C.G.)

SECOND APPEAL NO. 315 OF 2006

APPELLANT
PLAINTIFF

Kalabai, aged about 65 years, Wife of Shri Bisambher Sahu, Resident of Village Bhursi Dongri, Tahsil Nagri, District Dhamtari (C.G.).

VERSUS

RESPONDENTS
DEFENDANTS

1. Mannu Ram Son of Shri Sunder Ram, aged about 35 years;

2. Phagu Ram Son of Shri Punau Gond, aged about 50 years;

Both resident of Village Amgaon, Post Gharawat, Tahsil Nagri, District Dhamtari (C.G.).

No. 1937/06
Presented by Shri S.P. Sahu
dated 07-7-06

SECOND APPEAL UNDER SECTION 100 OF THE CODE OF CIVIL PROCEDURE, 1908

(20)
(21)

HIGH COURT OF CHHATTISGARH AT BILASPUR
SECOND APPEAL No. 315/2006

Kalabai

Versus

Mannu Ram & another

Post for judgment on 03 -10-2006

Sd/-
Dhirendra Mishra
Judge

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HIGH COURT OF CHHATTISGARH AT BILASPUR
SECOND APPEAL No. 315/2006

Kalabai

Versus

Mannu Ram & another

Present: Shri P.P. Sahu, Adv. for the appellant.

JUDGMENT

Per Dhirendra Mishra, J.

Heard on admission.

2. The appellant-plaintiff has preferred this appeal under Section 100 of the Code of Civil Procedure being aggrieved by the judgment and decree dated 28-4-2006 passed by the Additional District Judge, Dhamtari in Civil Appeal No. 138-A/2004 by which, the learned appellate Court allowing the appeal preferred by the respondents-defendants against the judgment and decree dated 27-2-2003 passed in Civil Suit No. 184-A/1998 by the 2nd Civil Judge Class-I, Dhamtari has dismissed the suit of the appellant-plaintiff which was decreed by the Civil Judge.

(Hereinafter the parties shall be referred to as per their description in the judgment of the trial Court)

3. Briefly stated the facts of the case are that plaintiff Kalabai filed a suit for possession of the suit land with the averments that she is the owner of Khasra No. 180/1 area 2.82/1.141 hectare and Khasra No. 181/1 area 0.18/0.073

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hectare, situated in village Amgaon. The defendant No. 1 Mannuram and defendant No. 2 Faganuram have encroached upon 2 ½ decimal area each over the above land and have constructed their house. The case of the defendants before the trial Court was that they have erected their house over the Government land and the land has been described as *Bade Jhad Ka Jangal* and the Gram Panchayat has allotted this land to the defendants for using. The trial Court decreed the suit by recording a finding that the defendants No. 1 and 2 each have forcibly encroached upon the land of the plaintiff bearing Khasra No. 180/1 new Khasra No. 300 area 2.82 acre admeasuring 0.85 x 35 Kadi and 43 x 85 Kadi and have undertaken construction and the plaintiff is entitled to obtain vacant possession after demolition of the construction and the suit land Khasra No. 300 has been wrongly described as Khasra No. 286/1.

4. The learned Additional District Judge has set aside the judgment and decree of the trial Court and dismissed the suit of the plaintiff while recording the findings *inter alia* that both the parties have stick to their statements in the plaint and written statement, where the witnesses of the plaintiff have stated that the land in question belongs to plaintiff Kalabai and the defendants have encroached upon 2 ½ decimal of land each and have constructed their house. On the other hand, the witness of the defendants has stated that they

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have undertaken the construction on the Government land as the same was allotted to them by the Gram Panchayat and the land in question has been described as *bade Jhad Ka Jangal* in the revenue record and to substantiate their pleadings, they have filed documents of Ex. D-1 and Ex. D-2 which show that the Gram Panchayat has allotted this piece of land to the landless persons and the same is recorded in the revenue papers as *Bade Jhad Ka Jangal* and thus the dispute between the parties, in fact, is that of demarcation and the same could be resolved by undertaking demarcation as per Section 129 of the C.G. Land Revenue Code, and then only, the claims of respective parties could be ascertained. However, the trial Court relying upon the report of Ex. P-1 has arrived at a conclusion that the defendants have encroached upon the land in question.

5. After careful scrutiny of the document of Ex. P-1, the learned appellate court has observed that a change has taken place after settlement in the position of the land and the report of Ex. P-1 has been submitted for the purposes of correction of the boundaries described in the map of new Khasra No. 300 as the map wrongly depicts the boundaries of Khasra Nos. 300 and 302 and which does not correspond to the existing possessions of the farmers. The appellate Court has set aside the judgment and decree of the trial Court which is based on document of Ex. P-1 on the ground firstly

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that the report itself is not clear and secondly the Revenue Inspector who has submitted the report has not been examined as a witness and thereby the defendants have been deprived of their valuable right of cross-examining the author of the Ex. P-1 and as such, the Court below was not justified in basing the report of Ex. P-1 against the defendants and on these findings, the appellate court has set aside the judgment and decree of the trial Court and dismissed the suit of the plaintiff with a finding that the plaintiff has failed to prove that the defendants have encroached upon the land and therefore, the decree of possession cannot be granted in her favour.

6. Learned counsel for the appellant submits that there was no dispute with respect to the demarcation of the disputed land between the parties. The only dispute between the parties was that whether the land which was allotted by the Gram Panchayat to the defendants was, in fact, Government land described as *bade Jhad Ka Jangal* in the revenue record or it was the land belonging to Bhumiswami right of the plaintiff. He submits that the Panchayat persons taking advantage of erroneous map allotted the land to plaintiff showing the same to be a Government land however, as per directions of the Tehsildar, the Revenue Inspector conducted spot enquiry and submitted his report of Ex. P-1 and according to the report of Ex. P-1, the map of the

disputed land stands altered by the Tehsildar and the same has attained finality as the defendants or the Gram Panchayat did not challenge the amendment in the map and therefore, the learned appellate Court has wrongly set aside the well reasoned judgment of the trial Court solely on the ground that the Revenue Inspector who has submitted the report of Ex. P-1 has not been examined. The above finding is contrary to law and facts and therefore, following substantial questions of law arise for adjudication of the appeal:-

A. Whether, the findings of the learned Court below in holding that the nature dispute is with regard to the boundaries of the land are perverse in the facts and circumstances of the case ?

B. Whether, the learned Court below justified in disbelieving the report submitted by the Revenue Inspector in revenue proceedings only on the ground that the concerned Revenue Inspector has not been examined by the learned Trial Court ignoring the facts that the conclusion of the revenue proceeding was for correction of the certain maps of village Amgaon on the basis of report Ex. P-1 and the same has not been challenged by the respondent ?

7. I have heard the learned counsel for the appellant. I have perused the impugned judgment and decree passed by the Additional District Judge, judgment of the trial Court and the material available on record.

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8. From perusal of the judgment of the trial court, it is evident that the suit for possession has been decreed solely relying upon the document of Ex. P-1 whereby correction in the map pertaining to Khasra No. 300 and 302 has been recommended. From a perusal of this report, the finding of the appellate Court that the report is not clear and ambiguous is established and in the aforesaid circumstances, the finding of the appellate Court that without examining the Revenue Inspector, no credence could be given to the report of Ex. P-1 cannot be faulted. Admittedly, the dispute pertains to location of the land and as such the plaintiff in order to succeed in her suit was required to adduce evidence regarding encroachment of defendants and the appellate Court by the impugned judgment has rightly held that the plaintiff has failed to prove the encroachment of the defendants over her land. The above finding is based on proper appreciation of oral and documentary evidence available on record.

9. Thus, no substantial questions of law as proposed above by the appellant arise for adjudication of this second appeal and the appeal preferred by the appellant is devoid of merit and substance and the same deserves to be dismissed and is dismissed at the admission stage itself.

Sd/-
Dhirendra Mishra
Judge